

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DIONISIO LAPURA Y CAJAN, ACCUSED-APPELLANT

G.R. No. 94494. March 15, 1996

Ponente: VITUG, J.

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VITUG, J.:

On appeal is the decision,[1] dated 04 June 1990, of the Regional Trial Court of Manila, Branch 12, in Criminal Case No. 88-61209, convicting herein appellant Dionisio Lapura y Cajan of murder and imposing on him the penalty of reclusion perpetua. The trial court has reserved to the heirs of the victim, Petronilo Lim, the right to file a separate suit for civil indemnification.

The information, dated 01 March 1988, which opened the criminal case against appellant read:

"That on or about February 19, 1988, in the City of Manila, Philippines, the said accused, conspiring and confederating together with others whose true names, identities and present whereabouts are still unknown and helping one another, did then and there willfully, unlawfully and feloniously, with intent to kill, evident premeditation and treachery, attack, assault and use personal violence upon one Petronilo Lim, by then and there shooting him several times with a .45 caliber pistol hitting him on left anterior lumbar and left thigh, thereby inflicting upon said Petronilo Lim, multiple gunshot wounds which were the direct and immediate cause of his death thereafter.

"Contrary to law."[2]

Following his arraignment on 13 April 1988, at which the accused pleaded not guilty to the charge, a petition for bail was heard. On 14 September 1988, the trial court rejected the petition. A motion for the reconsideration of the denial order, itself, was later denied.

The prosecution's evidence would tend to establish that at approximately 7:30 in the morning of 19 February 1988, Petronilo Lim, said to be a special agent of the Criminal Investigation Service,[3] was on board his car, with his sister, driving along Honorio Lopez Blvd., Balut, Tondo, Manila. Just as he started slowing down the car before turning left to Infanta Street, two persons suddenly came forward and fired at him.

Edgardo Samson, a 27-year-old bicycle maker, then working for the Teen's Bicycle Enterprises at Honorio Lopez Blvd., was only around ten (10) meters away from the shooting incident. Instinctively turning his head to where the sound of gunshots emanated, he saw two person - a hunchback ("kuba") who was positioned at the front right side of the car and another person at the left side of the vehicle.

The victim, now all bloodied, got out of the car and fired back using his "baby" armalite. Instantly, a person who was wearing a white undershirt, "maong" pants and white shoes, grabbed the armalite but one Ambet Zabala immediately grappled for its possession. Ambet succeeded in recovering the armalite which he turned over to "Amang" Manalo. The man in "maong" pants fled towards nearby San Rafael Village.

On 26 February 1988, Samson executed a sworn statement before Senior Investigation Agent Jesus Cañizares and

Sgt. Feliciano Garcia at the Special Investigation Unit, Criminal Investigation Service Command, Camp Crame, Quezon City. Later that day, he identified appellant in a police line-up to be the person who positioned himself at the left side of the victim's car and who fired a .45 caliber pistol at the victim. He executed another statement to this effect before Cañizares.

The victim, 55-year-old Petronilo Lim, died of three gunshot wounds: two (2) at the left anterior lumbar area which lacerated the small intestine, the liver, the kidney and the ascending colon, and one (1) "thru and thru" at the left thigh.[4] According to Dr. Marcial Ceñido, who conducted the autopsy, the victim must have been fired at while his body was inclined towards the right[5] and that, because there was "tattooing" on his left posterior forearm, the muzzle of the gun must have been pointed at close range.[6]

The defense interposed alibi. Appellant, then 32 years of age and a combo drummer by profession, testified that at the time the shooting took place he was sleeping at his sister's house in 1039 Int. 17, P. Vargas St., Tondo, Manila. He woke up rather late that day for he had performed the night before at the North Mall in Caloocan City. His sister, Adelaida Lapura Cuison, corroborating appellant's alibi, testified that on 19 February 1988, when she left the house at about 6:30 a.m., her brother was still sleeping in their living room and, coming back to the house around thirty minutes later, she found him still asleep. He did not wake up until around ten o'clock that morning.

Appellant was arrested by police officers in the afternoon of 25 February 1988 at the house of a fellow musician, Danilo Cabrera, in Mata Street, Divisoria, Manila. Appellant and Cabrera, along with another musician friend, Reynaldo Eliezer, were brought to Station 1 at North Bay, Tondo, Manila, where statements were taken. They were later brought inside the office of Col. Maganto where appellant was informed that his being a suspect in the killing of Petronilo Lim was because he resembled the cartograph of the killer. Cabrera added that they were watching television when the arresting policemen suddenly entered their house shouting, "You are NPA's, no one must move." [7]

After evaluating the evidence presented before it, the trial court gave credence to the prosecution's case, particularly to the eyewitness account of Samson, and accordingly rendered judgment convicting appellant of murder.

In this appeal, it is initially argued that the trial court should have outrightly dismissed the case against appellant considering (a) that the information was filed without the written authority of the city fiscal or prosecutor and (b) that the certification of the investigating fiscal appended to the information was defective for (i) not being under oath, (ii) having failed to state that a preliminary investigation under Section 3, Rule 112, of the Rules of Court was conducted, and (iii) not having stated that the accused was duly informed of the complaint and given the opportunity to present controverting evidence.

The sufficiency of the allegations found in the complaint, conformably with Section 6, Rule 110, of the Rules of Court,[8] has not been questioned; what, instead, is being assailed centers on the supposed failure of the investigating prosecutor to obtain the prior written authority of the city prosecutor in the manner required under Section 4,[9] Rule, 112, of the Rules of Court, before the filing of the case. This assertion contradicts the certification of the investigating fiscal attesting to the fact that the information has been duly filed under the authority of the City Fiscal; viz:

"I hereby certify that an ex-parte investigation in this case has been conducted by me in accordance with law; that there is reasonable ground to believe that the offense charged has been committed; that the accused is probably guilty thereof and that the filing of this information is with the prior authority and approval of the City Fiscal." [10] (Italics supplied.)

Absent convincing evidence to the contrary, the presumption of regularity in the performance of official functions has to be upheld. Moreover, this matter should have been raised below in a proper motion to quash^[11] that appellant could have done but did not.

Relative to the claim that the certification did not fully comply with the requirements of Sections 4,^[12] Rule 112, of the Rules of Court, we need merely to reiterate the settled rule that such certification is not an indispensable part of, let alone invalidate even by its absence, an information.^[13] In *People vs. Marquez*,^[14] the Court has had occasion to explain:

"x x x It should be observed that Section 3 {now Section 4} of Rule 110 defines an information as nothing more than 'an accusation in writing charging a person with an offense subscribed by the fiscal and filed with the court' Thus it is obvious that such certification is not an essential part of the information itself and its absence cannot vitiate it as such. True, as already stated, Section 14 of Rule 112 enjoin that 'no information x x x shall be filed, without first giving the accused a chance to be heard in a preliminary investigation,' but, as can be seen, the injunction refers to the non-holding certification. In other words, what is not allowed is the filing of the information without a preliminary investigation having been previously conducted, and the injunction that there should be a certification is only a consequence of the requirement that a preliminary investigation should first be conducted."

As the Court has also said in *Pecho vs. Sandiganbayan*^[15] -

"If the absence of a certification would not even invalidate the information, then its presence, although deficient because of some missing clauses or phrases required under Section 4, Rule 112 of the Rules of Court, can do nothing worse than the former."

In passing, the question of whether or not a preliminary investigation has been properly conducted is itself one that should be interposed prior to an arraignment.^[16] It does not here appear that appellant did before entering his plea of "not guilty" to the charge.

On the merits of the case, appellant faults the trial court for believing the testimony of Samson despite supposed contradictions and inconsistencies of the witness. A close look at the records betrays any validity to the allegation.

First of all, in his first sworn statement, Samson identified the three perpetrators^[17] of the crime; thus:

"16. T: Maari mo bang masabi ang mga anyo ng tatlong lalake na tinutukoy mo?

"S: Yon nasa harap ng kotse ay medyo kuba at katamtaman ang katawan at kulay ng balat, at iyon nasa gawing kaliwa ng kotse ay mahaba ang buhok, may bigote, mataas at regular ang lake ng kanyang katawan at katamtaman ang kulay ng balat at iyon dumamput ng Armalite ni Mr. Lim at (sic) payat at mababa at kayumanggi ang kulay"^[18]

Then, in his second sworn statement, Samson pointed to appellant:

"04. T: Ihinaharap namin sa iyo ngayon ang anim na lalaki na nadito (sic) sa loob ng tanggapan ng Special Investigation Unit ng CIS Camp Crame, Quezon City maari mo bang makilala at maituro sa mga lalaki na ihinarap sa iyo kung meron man sa kanila ang bumaril kay Petronilo Lim?

"S: Mayroon pong isa yong lalaki may bigote na nakasuot ng puting T-shirt at maong na pantalon na ikalawa sa aking gawing kaliwa. (Affiant pointing to the person of Dionisio Lapura y Cajan in a Police line-up composed of six persons)

"05. T: Ito bang tao na itinuturo mo ngayon ay nasisiguro mo siya na isa sa tatlo na magkakasama na bumaril kay Petronilo Lim na tinutukoy mo sa iyang salaysay?

"S: Opo siya ang isa sa tatlo na tinutukoy ko na bumaril kay Mr. Petronilo Lim at siya iyong bumaril na nasa gawing kaliwa ng kotse." [19] (*Italics supplied.*)

Most importantly, on the witness stand, Samson, although visibly shaken [20] and notwithstanding the vigorous and dramatic [21] cross-examination by defense counsel, still stood by his statement that appellant was the assailant who fired from the left side of the victim's car.

The defense could not attach any evil motive on the part of Samson that might have impelled him to testify falsely against appellant. [22] Absent the most compelling reason, it is inconceivable why Samson would openly concoct a story that would send an innocent man to jail. His credibility has likewise been tested and favorably evaluated by the trial court, a matter which cannot just be ignored.

Appellant contends that he has not been provided with the assistance of counsel at the "police line-up." He suggests that the Court take another look at its rulings on the right of an accused to counsel during a "police line-up." [23]

Upon his arrest, appellant Lapura refused to make any statement. [24] During the investigation that followed, appellant's counsel, Atty. Orlando Salantandre, was in the investigation room, a fact which, unexpectedly, he himself elicited from Agent Cañizares on cross-examination. Thus:

"Q

But do I recall from you that you have noticed this Samson pinpointing one of them?

"A

Yes, sir, that is part of his statement, the identification of the suspect.

"Q

Despite the fact you were busy during that line up?

"A

I was busy supervising the investigation but the Special Investigation Unit is only a small room that you could notice what is happening within.

"Q

Considering the fact you were present, did you notice the accused before he was included in this line up whether he was given a change to look for a lawyer to assist him during that line-up as part of the investigation?

"FISCAL

"Objection, Your Honor, the question is premised on the fact; it's one of the constitutional rights of the accused to be assisted by counsel during the police line-up.

"ATTY. SALATANDRE

"If Your Honor please, the line-up is already part of the investigation, Your Honor please. Then, the accused therefore, must be assisted by counsel because who knows it's done without prejudice to the procedure, Your Honor please.

"COURT

"Let the witness answer.

"A

If I am not mistaken, I do not only remember exactly the time element. If I remember correctly on that same night you were there, you appeared there.

"ATTY. SALATANDRE

"Yes, I was there.[25]

Given the above circumstances, it would be wrong to conclude that Atty. Salatandre was unable to provide legal assistance to appellant. Moreover, the inadmissibility of a police line-up identification of an uncounseled accused should not necessarily foreclose the admissibility of an independent in-court identification. In this instance, Samson, in open court, pointed to appellant and identified him again to be the person dressed in white T-shirt, pants and shoes who had come running towards him and the bridge after shooting Mr. Lim.[26]

Proof of motive, contrary to appellant's allegation, is not crucial where the identity of the accused, such as here, has been amply established.[27]

Appellant contends that *People vs. Opida*,[28] where the Court exonerated the appellant for nonobservance of certain of his constitutional rights as an accused, should also be applied in acquitting him. He alleges that "

"Like accused-Appellants *Olpidia* (sic) and *Marcelo* in that case, the constitutional rights of herein appellant have been grossly violated. From the very time that he was arrested without warrant on February 25, 1988 and detained at WPD station, Tondo, Manila in connection with the murder of *Petronilo Lim*, five days after its perpetration on the flimsy ground that his face resembles that of man drawn in a cartograph prepared by the police, perhaps based on the descriptions of people who may have witnessed the crime, to the filing of the fatally flawed information on March 2, 1988 or 7 days after his unlawful arrest, he was deprived of his constitutional rights against unreasonable search and seizure, of his right against arbitrary or unlawful arrest, of his right to remain silent and to counsel and to be informed of said rights, of his right to a preliminary investigation in a crime cognizable by the Regional Trial Court and finally of his right to have a valid information against him filed within the period allowed by law implied in Article 125 of the Revised Penal Code the provisions of which he had never waived." [29]

We agree with the Solicitor General that *Opida* is predicated on two vital premises; viz: (a) the trial judge's palpable partiality, as well as the irregular manner in which he conducted his interrogation of the accused and their witness, and (b) the admission of an extrajudicial confession despite strong evidence of manhandling by the police. These circumstances do not obtain in this case. During trial, while the judge did propound questions to the witnesses, they clearly appear, however, to be in the main clarificatory and certainly not adversarial in character.[30] Relative to his alleged warrantless arrest, he has waived, by filing a petition for bail any irregularity attendant thereto.[31] Indeed, by his application for bail, and by entering a plea of not guilty and then submitting to the proceedings below, appellant must be deemed to have foregone his right to preliminary investigation and to question any irregularity that might have attended such investigation.[32]

The trial court correctly appreciated the aggravating circumstance of treachery. Treachery attended the killing since the attack was perpetrated suddenly and without warning of any kind.[33] Evident premeditation, although alleged in the information, was not at all established. Absent any mitigating or aggravating circumstance, the penalty due for imposition would be, in the penalty of reclusion temporal maximum to death prescribed by Article 248 of the Revised Penal Code, its medium period of reclusion perpetua.[34]

WHEREFORE, the Decision in Criminal Case No. 88-6 1209 of the Regional Trial Court of Manila, Branch 12, convicting appellant Dionisio Lapura y Cajan of the crime of murder for the killing of Petronilo Lim and imposing on him the penalty of reclusion perpetua is hereby AFFIRMED. Costs against appellant.

SO ORDERED.

Padilla, Bellosillo, Kapunan, and Hermosisima, Jr., JJ., concur.

[1] Penned by Judge Procoro J. Donato.

[2] Rollo, p. 5.

[3] Jesus Cañizares, TSN., 20 April 1988, p. 18.

[4] Exh. D.

[5] Dr. Marcial Ceñido, TSN., 09 December 1988, p. 6.

[6] Ibid at p. 9.

[7] Danilo Cabrera, TSN., 12 October 1988, p.6.

[8] "Sec. 6. Sufficiency of complaint or information. - A complaint or information is sufficient if it states the name of the accused; the designation of the offense by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate time of the commission of the offense, and the place wherein the offense was committed."

[9] This section states that "(n)o complaint or information may be filed or dismissed by an investigating fiscal without the prior written authority or approval of the provincial or city fiscal or chief state prosecutor."

[10] Rollo, p. 5.

[11] Sec. 3(c), Rule 117, Rules of Court.

[12] "Sec. 4. Duty of investigating fiscal. - If the investigating fiscal finds cause to hold the respondent for trial, he shall prepare the resolution and corresponding information. He shall certify under oath that he, or as shown by the record, an authorized officer, has personally examined the complainant and his witnesses, that there is reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof, that the accused was informed of the complaint and of the evidence submitted against him and that he was given an opportunity to submit controverting evidence. Otherwise, he shall recommend dismissal of the complaint.

"In their case, he shall forward the records of the case to the provincial or city fiscal or chief state prosecutor within five (5) days from his resolution. The latter shall take appropriate action thereon within ten (10) days from receipt thereof, immediately informing the parties of said action.

"No complaint or information may be filed or dismissed by an investigating fiscal without the prior written authority or approval of the provincial or city fiscal or chief state prosecutor.

"Where the investigating assistant fiscal recommends the dismissal of the case but his findings are reversed by the provincial or city fiscal or chief state prosecutor on the ground that a probable cause exists, the latter may, by himself, file the corresponding information against the respondent or direct any other assistant fiscal or state prosecutor to do so, without conducting another preliminary investigation.

"If upon petition by a proper party, the Secretary, of Justice reverses the resolution of the provincial or city fiscal

or chief state prosecutor, he shall direct the fiscal concerned to file the corresponding information without conducting another preliminary investigation or to dismiss or move dismissal of the complaint or information."

[13] *Pecho vs. Sandiganbayan*, 238 SCRA 116, citing *People vs. Marquez*, 27 SCRA 808.

[14] *People vs. Marquez*, 27 SCRA 808, 813.

[15] *Supra.*, pp. 123-124.

[16] See *People vs. Monteverde*, 142 SCRA 668.

[17] According to Samson, a fourth person, a woman, who positioned herself at the store of one Aling Nora Munsayac, participated in the ambush-slay (Exh. A-5).

[18] Folder of Exhibits, p. 2.

[19] Folder of Exhibits, p.4.

[20] Edgardo Samson, TSN., 29 April 1988, pp. 11 & 15.

[21] *Ibid.*, p. 22.

[22] See *People vs. Cedenio*, 233 SCRA 356.

[23] This question has been put up and considered in at least three cases: *Gamboa vs. Cruz* 162 SCRA 642; *People vs. Dimaano*, 209 SCRA 819; and *People vs. Macam*, 238 SCRA 306.

[24] Jesus Cañizares, TSN. 20 April 1988, p. 10.

[25] *Ibid.*, pp. 14-15.

[26] Edgardo Samson, TSN, 27 April 1988, pp. 14-15.

[27] *People vs. Flores*. 237 SCRA 653.

[28] 142 SCRA 295.

[29] Rollo, p. 76.

[30] See *People vs. Opida*, *supra*.

[31] *People vs. Abapo*, 239 SCRA 373.

[32] *People vs. Nithcha*. 240 SCRA 283. citing *People vs. Hubilo*, 220 SCRA 389

[33] See *People vs. Adonis*, 240 SCRA 773.

[34] Art. 64 (1), Revised Penal Code.

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